



U.S. Department of Justice

Immigration and Naturalization Service

**B 4**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: Vermont Service Center Date: SEP 14 2000

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[REDACTED]

**Public Copy**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrence M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a [REDACTED] corporation that claims to be engaged in the import and export of "goods." The petitioner further claims to be a subsidiary of [REDACTED] located in [REDACTED]. The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), to serve as the sales and marketing director/vice president. The director determined that the petitioner had not established that the beneficiary had been or will be employed in a managerial or executive capacity. The director further found that the petitioner had not established that it had been conducting business for one year.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The first issue in the director's decision is whether the beneficiary has been and will be performing managerial or executive duties.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

In its letter dated July 15, 1998, the petitioner listed the beneficiary's duties as follows:

explore American markets and analyze prices to determine best suppliers; review catalogs and select materials and merchandise for purchases; submit proposals for consideration and allocation of funds; negotiate prices and sign purchasing contracts with suppliers; direct and coordinate company's purchasing and shipping activities; coordinate work of supporting staff; monitor projects, prepare progress reports, and report to the President the current status of each project. Marketing and Sales Director, as pertained to the position, will have full discretionary authority in day-to-day operation in the United States.

On May 1, 1998, the director requested that the petitioner submit additional information. In response, the petitioner stated that the beneficiary is "a third-in-command executive." The petitioner submitted an "organizational chart" which indicated that the beneficiary reported to the president and the commercial director and that three individuals reported to her.

On appeal, the petitioner states that the beneficiary is "the only one in the company who sets the company's sales goals and policies, makes decisions on company's future services and products, discuss arising matters with executives and managers of [REDACTED]". The record contains insufficient evidence to demonstrate that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The description of the duties to be performed by the beneficiary in the proposed position does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve her from performing nonqualifying duties. The evidence submitted suggests that the beneficiary is one of a limited number of United States-based employees. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

The next issue to be examined is whether the petitioner has established that it was doing business for at least one year. The petition was filed on February 18, 1998.

The phrase "doing business" is defined at 8 C.F.R. 204.5(j)(2) as follows: "Doing business means the regular, systematic and continuous provision of goods and/or services by a firm,

corporation, or other entity and does not include the mere presence of an agent or office."

The petitioner submitted photocopies of several invoices and bills of sale dated throughout 1997. These invoices indicate that the petitioner was purportedly shipping this merchandise abroad. On May 1, 1998, the director requested that the petitioner submit additional evidence. Specifically, the director requested sales invoices, shipping documents, and U.S. Customs documents. In response, the petitioner stated that it "just recently started its U.S. import operations. Due to this fact, there are no . . . U.S. Customs documents and other data regarding this side of the business accumulated." The petitioner submitted photocopies and translations of [REDACTED] documents relating to three shipments in May and June 1998. These documents are dated subsequent to the filing of the petition and, therefore, have no probative value.

On appeal, the petitioner argues that "since February of 1997 [it] has been providing regular, systematic, and continues [sic] provision of goods and services." The petitioner submitted photocopies of its tax returns. The petitioner has not submitted sufficient evidence to establish that it is doing business as defined in the regulations. In the present case, the petitioner did not submit adequate evidence to establish that it was doing business in international trade during the one-year period prior to filing the current petition. On appeal, the petitioner did not submit adequate evidence to rebut the director's findings. To show that an import and export company is doing business in a regular, systematic, and continuous manner, the proper evidence would include copies of the following documents from the United States Customs Service: Form 7525V (Shipper's Export Declaration), Form 7501 (Entry Summary), Form 301 (Customs Bond). The import forms should include the importer's identification number. Other forms that would be required in the day-to-day business of an import and export firm would include invoices, shipping manifests, shipping insurance policies, bills of lading, letters of credit, wire transfer advisement, inspection certifications, sales contracts, and general business correspondence. The petitioner has not submitted sufficient evidence. Accordingly, the petitioner has not established that it is conducting business in a regular, systematic, and continuous manner. For this additional reason, the petition may not be approved.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.